

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO

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NOEL A. CUMMINGS,

Plaintiff,

v.

GREATER CLEVELAND REGIONAL  
TRANSIT AUTHORITY, et al.,

Defendants,  
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CASE NO.: 1:14-CV-01729

OPINION & ORDER  
[Resolving Doc. [60](#)]

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

On February 4, 2015, Plaintiff Noel A. Cummings and Defendant Greater Cleveland Regional Transit Authority settled their employment dispute.<sup>1</sup> Plaintiff Cummings now moves the Court to vacate the settlement agreement and reinstate her complaint.<sup>2</sup> For the reasons below, this Court **DENIES** Plaintiff Cummings' motion.

**I. Background**

On August 5, 2016, Plaintiff Cummings filed a motion to review her settlement agreement with Defendant Greater Cleveland Regional Transit Authority, arguing that its terms conflict with the definition of "earnable salary" under Ohio Revised Code § 145.01 (R)(2)(h).<sup>3</sup> The Court denied the motion, citing lack of an actual case or controversy as well as a lack of jurisdiction.<sup>4</sup> Since then, the Ohio Public Employees Retirement System ("OPERS") has determined that the terms of the settlement agreement violate [Ohio Rev. Code § 145.01](#) and [Ohio Admin. Code § 145-1-](#)

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<sup>1</sup> Doc. [43](#).

<sup>2</sup> Doc. [60](#). Plaintiff Cummings' former counsel, Harvey Abens Iosue Co., LPA, and Defendants both oppose the motion. Docs. [61](#), [62](#). Plaintiff replied. Doc. [63](#).

<sup>3</sup> Doc. [55](#).

<sup>4</sup> Doc. [59](#).

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[26\(H\)\(1\)](#).<sup>5</sup> Plaintiff now moves to vacate the Court's February 4, 2015 dismissal order,<sup>6</sup> rescind the settlement agreement, and reinstate her complaint.<sup>7</sup>

## II. Legal Standard

Under [Federal Rules of Civil Procedure 60\(b\)\(1\)](#), "[o]n motion and just terms, the court may relieve a party . . . from a final judgment, order, or proceeding" in the case of "mistake, inadvertence, surprise, or excusable neglect."<sup>8</sup> A 60(b)(1) motion must be made "no more than a year after the entry of the judgment or order" in the case.<sup>9</sup> "[T]he party seeking to invoke [Fed. R. Civ. P. 60(b)] bears the burden of establishing that its prerequisites are satisfied."<sup>10</sup>

"[O]nly the existence of fraud or mutual mistake can justify reopening an otherwise valid settlement agreement."<sup>11</sup> A unilateral mistake does not warrant rescission of an agreement.<sup>12</sup>

## III. Discussion

Plaintiff's motion fails for two reasons. First, Plaintiff's motion is untimely.<sup>13</sup> Plaintiff's Rule 60(b)(1) motion must have been filed within one year of this Court's February 4, 2015 order.<sup>14</sup> Plaintiff did not file her motion until August 29, 2016,<sup>15</sup> nearly seven months late.

Second, even if Plaintiff's motion were timely, Plaintiff made a unilateral rather than a mutual mistake in entering the settlement agreement. Arguably, Plaintiff mistakenly believed that

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<sup>5</sup> Doc. [60-1](#).

<sup>6</sup> Doc. [43](#).

<sup>7</sup> Doc. [60](#).

<sup>8</sup> [Fed. R. Civ. P 60\(b\)\(1\)](#).

<sup>9</sup> *Id.* at (c)(1).

<sup>10</sup> [McCurry ex rel. Turner v. Adventist Health System/Sunbelt Inc.](#), 298 F.3d 586, 592 (6th Cir. 2002).

<sup>11</sup> [Brown v. Cty. of Genesee](#), 872 F.2d 169, 174 (6th Cir. 1989).

<sup>12</sup> *Id.*

<sup>13</sup> Plaintiff and Defendant initially appear to disagree over whether Plaintiff's motion is a Rule 60(b)(1) or (b)(5) motion. Doc. [60](#) at 5; Doc. [62](#) at 3. The one-year time bar applies only to Rule 60(b)(1) motions. [Fed. R. Civ. P 60\(c\)\(1\)](#). In Plaintiff's reply, she does not dispute that her motion falls under Rule 60(b)(1), but argues that it is timely nonetheless. Doc. [63](#) at 2. Regardless of the parties' positions, the Court finds that Plaintiff's motion is premised on a mistake of law and is therefore subject to Rule 60(b)(1)'s one-year limitation.

<sup>14</sup> Doc. [43](#); [Fed. R. Civ. P 60\(c\)\(1\)](#).

<sup>15</sup> Doc. [60](#).

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her settlement agreement monthly payments would be “earnable salary” and would therefore allow her to achieve 30 years of total service credit in order to retire.<sup>16</sup> OPERS determined—a year and a half later—that the payments are not earnable salary under Ohio law.<sup>17</sup> Defendant did not make this decision. Plaintiff claims that this new information invalidates the settlement agreement.

But “ignorance of the law [is an] insufficient bas[i]s for 60(b)(1) relief.”<sup>18</sup> Plaintiff, who retained counsel specifically to review the settlement agreement,<sup>19</sup> was responsible for confirming whether settlements payments would qualify as “earnable salary.”<sup>20</sup> She cannot now “avoid the consequences of [her] decision to settle the litigation . . . [because] it subsequently develop[ed] that the choice was unfortunate.”<sup>21</sup> Because Plaintiff’s mistake was unilateral, no 60(b) relief is available.<sup>22</sup>

#### IV. Conclusion

For the reasons above, this Court **DENIES** Plaintiff Cumming’s motion.

IT IS SO ORDERED.

Dated: September 28, 2016

s/ James S. Gwin  
JAMES S. GWIN  
UNITED STATES DISTRICT JUDGE

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<sup>16</sup> See Doc. [60](#) at 3.

<sup>17</sup> Doc. [60-1](#).

<sup>18</sup> *FHC Equities, L.L.C. v. MBL Life Assur. Corp.*, 188 F.3d 678, 684–85 (6th Cir. 1999) (quoting *Edward H. Bohlin Co. v. Banning Co.*, 6 F.3d 350, 356–57 (5th Cir. 1993)).

<sup>19</sup> Doc. [60-5](#) (Plaintiff’s February 20, 2015 engagement letter for representation by Attorney Lawrence Mays to “provide [] advice and counsel on a Settlement Agreement and Release with Greater Cleveland Regional Transit Authority”).

<sup>20</sup> *Hill v. Ohio State Univ.*, 870 F. Supp. 2d 526, 533 (S.D. Ohio 2012) (finding a unilateral mistake where “Plaintiff was represented by competent counsel” during settlement negotiations who could have confirmed that “payments made in consideration of retirement are not considered compensation”).

<sup>21</sup> *Steinhoff v. Harris*, 698 F.2d 270, 275 (6th Cir. 1983).

<sup>22</sup> *Brown*, 872 F.2d at 174; see also *Hill*, 870 F. Supp. 2d at 533.